

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHRISHA CREATIONS, LTD.	)	
	)	Civil Action No. 08-CV-01185 (LBS)
Plaintiff/	)	
Counterclaim Defendant,	)	ECF Case
	)	
- against -	)	<b>PLAINTIFF CHRISHA CREATIONS,</b>
	)	<b>LTD. REPLY AND AFFIRMATIVE</b>
GEMMY INDUSTRIES CORP.,	)	<b>DEFENSES TO COUNTERCLAIMS OF</b>
	)	<b>DEFENDANT GEMMY INDUSTRIES</b>
Defendant/	)	<b>CORP.</b>
Counterclaim Plaintiff,	)	

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Plaintiff/Counterclaim Defendant, CHRISHA CREATIONS, LTD. (“Chrisha”), by and through its attorneys, Rivkin Radler LLP, hereby replies to the counterclaims of Defendant/Counterclaim Plaintiff, GEMMY INDUSTRIES CORP. (“Gemmy”), as follows:

**THE PARTIES**

1. Chrisha admits the averments contained in Paragraph 1 of Defendant/Counterclaim Plaintiff’s counterclaims.

2. Chrisha admits the averments contained in Paragraph 2 of Defendant/Counterclaim Plaintiff’s counterclaims that it is a New York corporation and states that its principal place of business moved from Greenville, Rhode Island to Smithfield, Rhode Island.

**JURISDICTION AND VENUE**

3. The averments contained in Paragraph 3 set forth a legal conclusion to which no response is required. To the extent a response is required, Chrisha denies the averments contained in Paragraph 3 of Defendant/Counterclaim Plaintiff’s counterclaims and refers all questions of law to this Honorable Court.

4. The averments contained in Paragraph 4 set forth a legal conclusion to which no response is required. To the extent a response is required, Chrisha denies the averments contained in Paragraph 4 of Defendant/Counterclaim Plaintiff's counterclaims and refers all questions of law to this Honorable Court.

5. The averments contained in Paragraph 5 set forth a legal conclusion to which no response is required. To the extent a response is required, Chrisha denies the averments contained in Paragraph 5 of Defendant/Counterclaim Plaintiff's counterclaims and refers all questions of law to this Honorable Court.

6. The averments contained in Paragraph 6 set forth a legal conclusion to which no response is required. To the extent a response is required, Chrisha denies the averments contained in Paragraph 6 of Defendant/Counterclaim Plaintiff's counterclaims and refers all questions of law to this Honorable Court.

### **FACTUAL ALLEGATIONS**

7. Chrisha admits that Gemmy designs, develops, markets, and sells several seasonal decorations. Chrisha denies knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 7 of Defendant/Counterclaim Plaintiff's counterclaims.

8. Chrisha denies the averments contained in Paragraph 8 of Defendant/Counterclaim Plaintiff's counterclaims and states that Chrisha is the owner of the '446 patent with the exclusive right to enforce the '446 patent against infringers and collect damages for all relevant times, including the right to prosecute this action.

9. Chrisha denies the averments contained in Paragraph 9 of Defendant/Counterclaim Plaintiff's counterclaims and states that Chrisha is the owner of the

‘137 patent with the exclusive right to enforce the ‘137 patent against infringers and collect damages for all relevant times, including the right to prosecute this action.

10. Chrisha admits the averments contained in Paragraph 10 of Defendant/Counterclaim Plaintiff’s counterclaims.

11. Chrisha denies the averments contained in Paragraph 11 of Defendant/Counterclaim Plaintiff’s counterclaims and respectfully refers all questions of law to this Honorable Court.

12. Chrisha denies the averments with respect to invalidity contained in Paragraph 12 of Defendant/Counterclaim Plaintiff’s counterclaims.

**FIRST COUNTERCLAIM**

(Declaratory Relief for Invalidity of the ‘446 Patent)

13. Chrisha repeats and realleges its responses to the averments set forth in Paragraphs 1 through 12 as if fully set forth herein.

14. Chrisha denies the averments contained in Paragraph 14 of Defendant/Counterclaim Plaintiff’s counterclaims.

15. Chrisha denies the averments contained in Paragraph 15 of Defendant/Counterclaim Plaintiff’s counterclaims.

16. Chrisha denies the averments contained in Paragraph 16 of Defendant/Counterclaim Plaintiff’s counterclaims.

**SECOND COUNTERCLAIM**

(Declaratory Relief for Invalidity of the ‘137 Patent)

17. Chrisha repeats and realleges its responses to the averments set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. Chrisha denies the averments contained in Paragraph 18 of Defendant/Counterclaim Plaintiff's counterclaims.

19. Chrisha denies the averments contained in Paragraph 19 of Defendant/Counterclaim Plaintiff's counterclaims.

20. Chrisha denies the averments contained in Paragraph 20 of Defendant/Counterclaim Plaintiff's counterclaims.

**THIRD COUNTERCLAIM**

(Declaratory Relief for Non-Infringement of the '446 Patent)

21. Chrisha repeats and realleges its responses to the averments set forth in Paragraphs 1 through 20 as if fully set forth herein.

22. Chrisha denies the averments contained in Paragraph 22 of Defendant/Counterclaim Plaintiff's counterclaims and respectfully refers all questions of law to this Honorable Court.

23. Chrisha denies the averments contained in Paragraph 23 of Defendant/Counterclaim Plaintiff's counterclaims.

24. Chrisha denies the averments contained in Paragraph 24 of Defendant/Counterclaim Plaintiff's counterclaims.

**FOURTH COUNTERCLAIM**

(Declaratory Relief for Non-Infringement of the '137 Patent)

25. Chrisha repeats and realleges its responses to the averments set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. Chrisha denies the averments contained in Paragraph 26 of Defendant/Counterclaim Plaintiff's counterclaims and respectfully refers all questions of law to this Honorable Court.

27. Chrisha denies the averments contained in Paragraph 27 of Defendant/Counterclaim Plaintiff's counterclaims.

28. Chrisha denies the averments contained in Paragraph 28 of Defendant/Counterclaim Plaintiff's counterclaims.

WHEREFORE, Chrisha denies that Defendant/Counterclaim Plaintiff is entitled to any of the relief requested against it in Defendant/Counterclaim Plaintiff's wherefore clause and hereby requests dismissal of the counterclaims in their entirety.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Gemmy fails to state any claim upon which relief can be granted under any theory.

#### **SECOND AFFIRMATIVE DEFENSE**

The counterclaims against Chrisha are barred by the applicable statute of limitations.

#### **THIRD AFFIRMATIVE DEFENSE**

Gemmy's counterclaims are barred by the doctrines of laches, estoppel, unclean hands and/or waiver.

#### **FOURTH AFFIRMATIVE DEFENSE**

Both the '446 and '137 Patents are valid under 35 U.S.C. §§ 101, 102, 103, and/or 112, and both the '446 and '137 patent are infringed by Gemmy.

**FIFTH AFFIRMATIVE DEFENSE**

Chrisha reserves the right to amend its Answer and to assert additional defense and/or supplement, alter or change this Answer upon completion of appropriate investigation and discovery, up to and including the time of trial.

Uniondale, New York  
March 26, 2008

/s/

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